G. R. S. 58]

Previous references.

~~191~~ 87

(L R)

File No. 31 of 1887.

Serial Nos. 1—3

Later references.

P-35

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-3

Part B for ~~1886~~ 87

SUBJECT.

Disputes regarding the right to irrigate S. no 71 of Kesavaramballi by a channel

---

Countermanded

Indexed

W D 1551—GPE—20,000—12-12-15

(1) (52)

Reference

Chitaldroog Deputy Com'rs Docket No 543 of the 11th January 1888. 316

Memorandum

On the 6th of January 1887 a Ryot named Kuria complained to the Collector of Chitaldroog to the following effect:—

"I applied for survey No: 71, wet field, for cultivation, and purchased it for Rs: 12 at a public revenue sale. I have already paid the first instalment of its revenue. On my attempting to irrigate the land by it's old channel which runs from a water course through one Bottaraiah's land, the latter stopped me; and he has also made arrangement to fill up the old channel. The sowing season is fast passing away, and I shall be put to heavy loss, if early orders are

are not classed
in regard to the
irrigation of my
land by its
old channel."

The Auditor
thereupon, sent
orders to the Chairman
on the 11th January 1887,
directing him to cause
the complainants'
land to be irrigated
by its old channel,
and to warn Portuondo
that it is not proper
that he should
prevent the complainants
from irrigating his
land by the old
channel. The Chairman
deposed on the 25th
January 1887 that
he ascertained
from the villagers
that the old irrigating
channel of the
complainants' land
always ran through
the intervening Portuondo
holdings, and that
the

the latter pleaded that he would not allow water to be taken through his land to the complainants land, as it would tend to injure his own land. The Chairman also submitted the villagers' Charge, in which they certified that the natural irrigating channel of the complainants land always ran through the land of Pottiriyan land No: 55.

On the 4th February 1887, the Surveyor examined the complainant and ascertained from him who were the former occupants of his land, before it became Govt: waste, and summoned the following persons:—

1 Govindoo Rhamachandra
2 Timmaya
3 Yellaiah
4 Koombar Shekhiah
5 Hadiya Ramanaiya
6 Pi. Ramanaiya
7 Shanbogue Ramanaiya.

On the 18th February 1887 the Surveyor examined the following witnesses on behalf of the

The Complainant:—

1. P. Scannell a

2 Josiah

3 Domorakia

4 M. Hanna

5 Shaboque

Shannopin

P. P. Scannell swears

[redacted] that the land

now occupied by the

defendant Scottawin,

was at first in her

father-in-law's holding

and on his death, it

was in the occupancy

of her husband &

his brother, & that the

land [redacted] taken

up by the complainant,

used to be irrigated

always by an old

channel which

ran through the

above land of her

husband, & which

is now in the possession

of the said Scottawin.

Josiah swears

that the land which

is now in the complainants'

holding

holding, used to be
irrigated always
by an old channel
which ran through
the disputed Footteriah's
land, while the complainants
land was in the enjoyment
of the previous occupants.

Footteriah
swears that the land
lately taken up by
the complainant,
was in his occupancy
for 4 or 5 years, and
used to be irrigated
by an old channel
which ran through
the land now occupied
by the disputed
Footteriah; that
when the complainants
land was in his occupancy,
the father of the said
Footteriah's land
was one Bheemiah;
that while his servant
was one day taking
water to his land by
[redacted] the old channel
through the disputants
land, did Bheemiah
Bheemiah not only
stopped him, but
also assaulted him,
for which he was
fined

Juried Rs: 30; that
Bleemish being
unable to pay the
same, he sold the
said land to him
(witness); that he
enjoyed it for two
years & then sold
it to one Kunkiah,
who sold it to the
present occupant
Sotteriah, and
that through the water-
course, from which
the channel in
dispute is drawn
through Sotteriah's
land, adjoins
the complainants'
land, still the
complainants
land cannot be
irrigated otherwise
than by the channel
which runs through
Sotteriah's
land; because
the watercourse
is

is very deep at the spot where it adjoins the Complainant's land.

Mr. Drennan swears that, when the complainant's land was previously in the occupation of other tenants, it used to be irrigated by the old channel which runs through the disputing Postmaster's land.

Shanbogue Thammanna swears that the wet portion of Survey No: 71, which is now in the complt's holding, used to be irrigated always by the old channel which runs through the said Postmaster's land No: 55, and also through another No: 54; that the Village accounts show that the above No: 71 is commanded by a channel; that the said channel

Channel is drawn
from a Water-
course; that though the intercourse
adjoins the
complainants'
land, yet it is not
possible to irrigate
it from the adjoining
spot, because there,
it is very deep; and
if at this spot
a large sum of
Rs. 100 is
expended, and
a "Kapile" well is
built up, it would
be possible to irrigate
it from that spot;
but then it would
have to be classed
as "Kapila' Bagayet";
and that the complts'
land being classed
in the Survey Accounts
as well as in the
old Accounts, as
"Pari" (wet), and as
it is shown in the
Accounts as being
commanded by
"D.E.", it is to be treated
as "Pari" (land irrigated
by running water drawn
from

3

from a tank,
canal, or watercourse.

The Auditor
examined the
following witnesses
on the 2nd March 1893
on behalf of the
disputant Fotterwick

1 Ramsamuthah
2 Goodah Pakeeah
3 Chuboyee

Ramsamuthah
Ramsamuthah
and Goodah Pakeeah
swear that they
know that water
from the Watercourse
used to run as
far as the said
Fotterwick's garden
land, but they did
not see that the
water went beyond
that land, either
into the land now
occupied by the
Complainant, or
into any other
land

land.

Shaubegwe Pasamaquadi avers that the complainants' west portion of Survey No. 71 was old No. 39; it was, after the Survey of settlement, taken up by Madju Pomoway who held it for 5 years and then resigned; and it was taken up by the complainants in the year 1887; & that from the accounts which he produces, it is clear that it is commanded by the channel.

The Arbitrator, on the 19th May 1887, submitted the record of his inquiry for the orders of the Deputy Com'r stating that the complainants' land, [redacted], as shown both in the old accounts and in the Survey "Cotar", is commanded by the channel and is purely a wet land; that on inspecting the spot, he found that at the irrigating channel did, even through the disputants' land, and

and that the Complainant's land had no other source of irrigation.

The Deputy Com.r on the 25.th May 1887 ordered that either the Amildar or Sheristadar should inspect the spot properly and report whether there was any other means of irrigating the Complainant's land or not.

The Amildar replied on the 20.th June 87 that he did inspect the spot; there was no other means of irrigation, and that, in accordance with the Survey "Kotas" it was just that water should be supplied to the Complainant's land by the channel through which it runs from the watercourse.

The Deputy Com.r on the 23.rd June 1887 ordered that the Complainant should establish his right in a Civil Court, as he obtained his land

land on Thursday
last year, & on it
was not clear that
the irrigating channel
thereof, passed through
the disputants' land.

Against the
above order, the
Complainant
appeals to this Office
on the following Grounds:—

(1) That Lot 1—24 ~~XII~~ out
of survey No: 7 is classed
as wet in the Survey
accounts, and it is to
be irrigated by water
from a small channel
running thro' No: 55, and
drawn from a water
course bearing No: 576.

(2) That the Auditor, after
personal inspection, saw
that the irrigating channel
of the Appellants' land
~~X~~ passed through the
disputants lands, and
reported accordingly;
and stated also that the
Appellants' land had
no other means of irrigation.

(3) That the Deputy Coll.
was not right in ordering
that the Complainant
should.

Chunbel establish his
right in a Civil Court,
while it is the duty of
the Revenue Depart.t
to supply water to the
wetlands from their
source of irrigation,
on account of which
they are classed as
such.

(4) That from the
Survey Accounts &c.
which he has produced,
it has been established
that the irrigating Channel
of this land passes
through the disputants
lands. ———

The Authenticated
Extract signed by
Col: Grant, produced
by the Appellant,
states :—

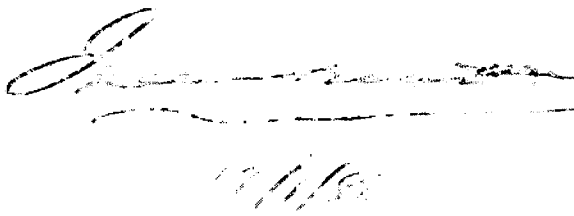
" Part of Survey } Vetaran
No: 71 } A. G.
1—24

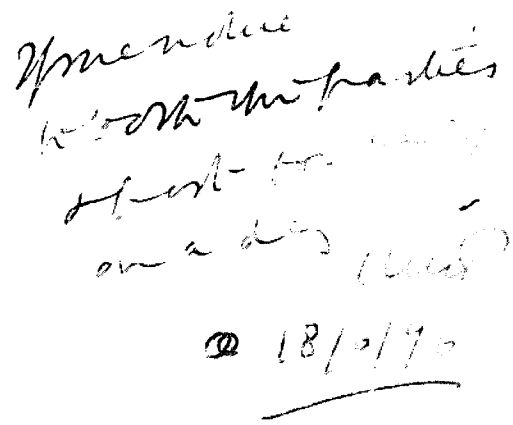
This wet land gets
its water through a
channel drawn
from ~~Survey~~ a Water-
Course in Survey No: 596.

The Sketch submitted
by the Deputy Coll.r
as ordered in this
Office Memo: No: 581

Dated 4th December 1873

Shows that the irrigating channel in dispute, is drawn from the watercourse in Survey No: 596, beginning from the spot marked A; and before it enters the complainant's land Cuts B in Survey No: 71, it has to pass through the Survey [redacted] (D & C), Nos: 542 55. Of these, No: 55 belongs to the defendant. The Notes entered in the Sketch, state that at the spot marked A there is a Spring, from which the channel in dispute is drawn.





Recd 4.35 P.M.

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Office note

Petn No 2549 of 2-12-1887.

Petr Appaji Kariya

Subject

Appeal against the
order regarding the rights
to irrigate Survey No 71
of Kasaramballi by a
channel passing through
S. No 55 of the same village

Petr obtained land bearing
Survey No 71 of Kasaramballi
attached to Siddanaikalli in
the Chikkaduy Th. on Rent-Roll
in the year 1886-87 - on his
attempt to cultivate the land
by taking water from a
channel passing through
the S. No 55 belonging to
one Patteriah, he was obs-
tructed from taking water
through the said channel -
on complaint to the Mamlatdar
he inspected the spot and
submitted the records of the
case to the Dy Comr stating
that the complainant's land
as shown both in the old
accounts and in the Survey
"Kolas" is commanded by
the channel and is purely
a wet land, that on inq-
respecting the spot he

found that the irrigating channels did run through the disputed land and that the complainant's land had no other source of irrigation.

The Survey Court on the 25th May 1887 ordered that the Trustees of the Otaki Native Reserve should be restrained from exercising any other means of irrigating the complainant's land.

As no part of the Otaki Native Reserve was set apart as an endowment for irrigation purposes, in accordance with the Survey Order it was finally that water should be supplied to the Petitioner's land by the channel through the Native Reserve, the Survey Court ordered on 27th June 1887 that the complainant should obtain his right as an civil court & the obtained his right within six months from that date, and that the channel through the disputed land

In pursuance with the 32nd Vict 1887, the Otaki Native Reserve Committee & the Petitioner have no power

(over)

-factory evidence that Plaintiffs (and (Petrs) used to get the Plaintiff channel water through the Defendant's land for the statutory period, that evidence of any single instance in which the Plaintiff's land might have got the water would not by itself even if it be true, go to establish the right in question and has dismissed the suit with costs.

An appeal by the Petrs to this office against the order of the Lower Court, the records were called for and the parties heard in person. The civil records and also the Colorpalli were called for and order passed by the 2nd as follows.

The Munsiff does not support the Village statement that he saw any trace of a channel in the Defendant's land for taking water into that of the Petrs. This fact is an omission on his part, is an important one as otherwise the circumstances would favour him good circumstantial evidence. Then again he seems to base his judgment on the fact that if water is taken through the dis-

-puted

- portion channel, the whole
and not only a portion of
the Plaintiff's land would be
irrigated by it. The encroach-
ment because only a portion of
it would be irrigable the
water of the halla channel was
taken during July. The
correctness of these observa-
tions must be tested by an-
other survey of the portions of
the Ry Company himself recently
made of this encroachment
parties. It is also significant
that in the statement published
in defendant's land (1905) it
is stated that the water of the
well does not go beyond that
land whereas nothing is
said about the channel
water. The observations impressed
it that there was going beyond.
Those papers will be sent to
you by Company for production in
Court and a detailed
report on the points noticed."

The Ry Company in reply
to the Plaintiff's memorandum
matter, observed that if
the petrol might be irrigation
from the channel the whole
ground would be used for
irrigation, and both parties
would suffer from the

9

water inadequacy of the water supply. The best way out of the difficulty would be to abide by the suggestion of the well assessment of one acre 24 Cawnies of No 71 and class the entire No as dry —

In pursuance of the 2nd councillor the Survey Superintendent's opinion was solicited who in his docket No 895 dated 5.3.97 states that as the Walla channel supply to Survey No 71 is stated to be unavailable, the 1 acre and 24 Gunthas of that No was classed as well & part will non-bearing as dry, the Pattedar no longer of course having any right to the channel supply at any time.

Subd for orders.

16/3/97

through the Defendants No 55
into the Channel No 77. Such
is the case with similar to the
the Channel but except through
the said Channel. Therefore
herewith submit the case
of the case for the Deputy
Commissioner only."

That briefly is the case put by
the Claimants, the Defendants
have made an order dated the 25th of
June 1925, directing that the Claimants
(appellants) should withdraw
his right to the channel in the
Civil Court. On Enlargement
dated 3rd July 1925 given
to the appellants by the Claimants
making the payment of the
order of the Deputy Commissioner,
to the Civil Court. Against
this order, the appellant respectfully
begs to appeal to the Queen on the

the following terms:—

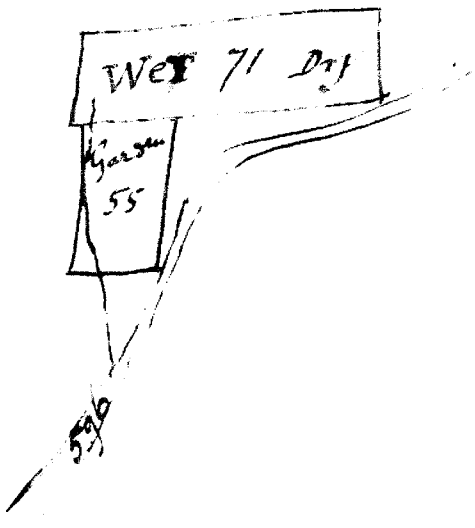
(1) That a sum is considered
insured by the Society
by reference to the Schedule
of Benefits which is the sum
payable on the death of the Member
from the date of his joining
an Accident Section of the
Class in which he is
classified at the
Commencement of the
Agreement and which
during the first
Twelve Calendar Months
of the Agreement is
increased by the
Bonus Additions
declared in respect of the
Accident Section of the
Class in which he is
classified at the
date of his death

(2) It will be seen from the
above that the Society does
not undertake to
(A)
pay the Sum Insured
on the death of a Member
by Suicide (whether sane
or insane) within
[illegible]

that the applicant's right is derived by the channel from the water course at No. 5 A.

(3) It will also be seen from the marked sketch filed by (B) for the channel given by Narasappa, the former occupant of the land, that he used to irrigate the wet garden through the marked channel.

(4) The respondent No. 5 in a garden land and certain a well. He is not entitled to the water from the said water course. Therefore, he makes use of it. The applicant has been getting water, he has a better claim to get water, in which Government has classed and


Wet 71 Dry
Yards
55
59

competent to interdict the Respondent from interfering with lawful irrigation of the appellants' land by the said channel.

(7) If, instead of levying the expenses of the cultivation of the wet lands, the Revenue Authorities threaten them elsewhere in the way and put them to the heavy expense of prosecuting suits in Civil Courts to obtain for irrigating their lands by water from the Government channel or otherwise for irrigation, by which such lands are commanded, how can they take up the new wet lands for cultivation, and how will the Government realise its assessment for

upon them?

That under the time decisions,
the defendant pays that the Water
may be previously filed to
cancel the Deputy Commissioner
order and to file suit to limit
the defendant's liability
without filing with the Deputy
Commissioner, and to dismiss the
Employment from jurisdiction
with it.

2-12-07

INDIA COURT FEE STAMP

MYSORE

10-1-87

EIGHT ANNAS

B

11

29/8/87

0-3-6

(General Letter No. 29.)

1887-88.

From The Assistant Commissioner Shimoga Division

To

The Chief Secretary to the Dewan of Mysore.

Dated 1st January 1888.

Despatched 1st do

Received

Enclosures No. Serial Nos. Enclosures

General No. 343. } 1887-88.
No. 316.

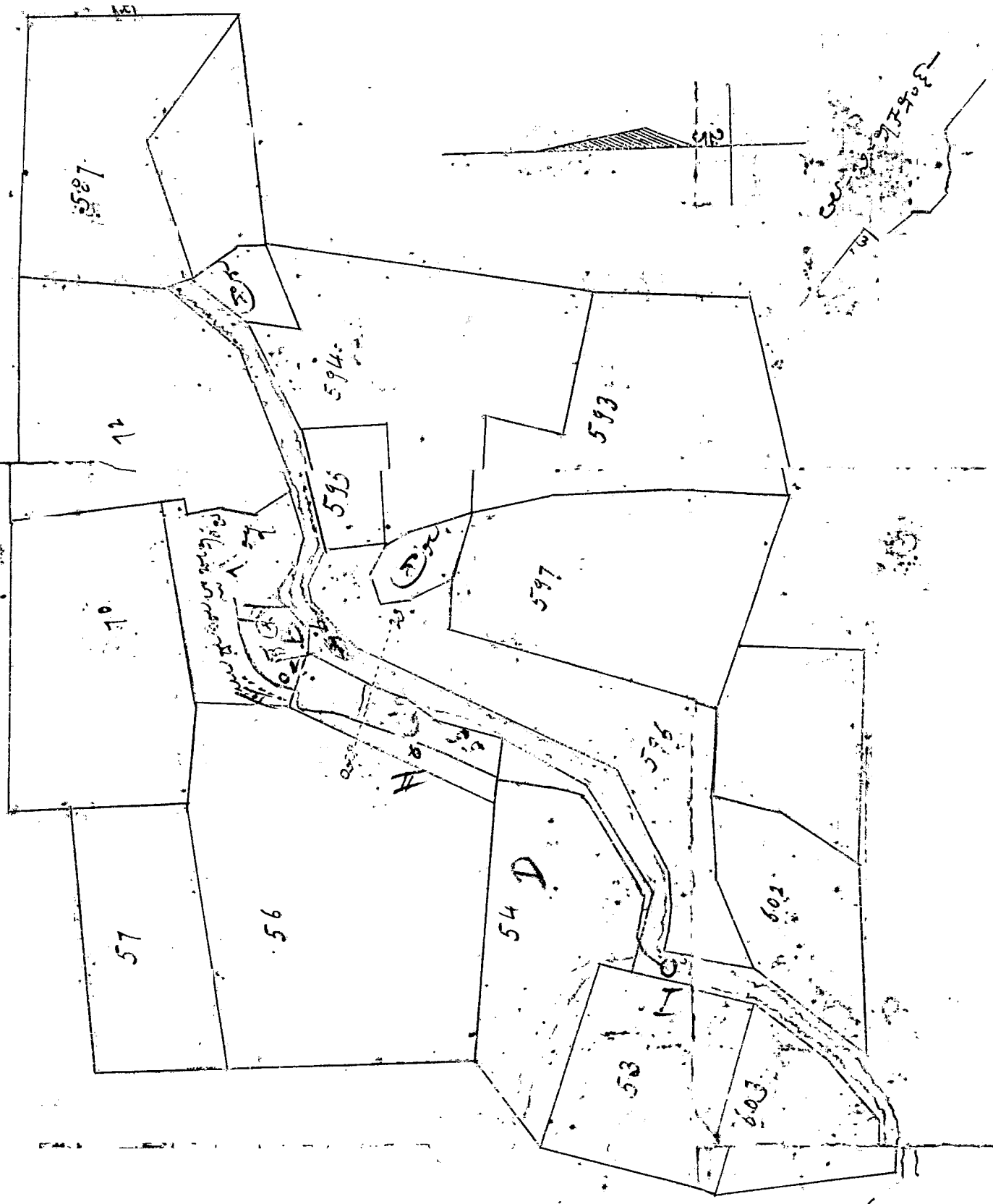
In forwarding the English petition herein with its enclosures received with his official Memo No. 38 dated 9th instant, dated Sagar 1st instant, I have to submit the following statement of the case with a sketch of the lands in dispute, as requested.

Assistant Commissioner.

Sig: Deputy Commissioners Circle:

64

Section L.R.
File No 31797
Serial No 3



I. Shows the Telephone
II. " the Kapitelwald No. 55 in good working order.
III. " the trace of the channel
IV. " the portion flagged west
V. " the land in dispute in No. 55